

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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at 12 o'clock and 28 min. PM.
WALTER A. Y. H. CHINN, CLERK

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	CR. NO. 03-00106 DAE
)	
Plaintiff,)	UNITED STATES' OPPOSITION TO
)	DEFENDANT'S APPLICATION FOR
vs.)	ISSUANCE OF SUBPOENA;
)	CERTIFICATE OF SERVICE
JOHN ANDREW GILBREATH,)	
)	
Defendant.)	
)	

UNITED STATES' OPPOSITION TO DEFENDANT'S
APPLICATION FOR ISSUANCE OF SUBPOENA

The defense seeks to subpoena four law enforcement agents/employees of the United States Department of Justice for testimony at a motion to suppress. The United States believes the defense is seeking to depose possible government witnesses prior to trial and to dispense with the requirements of the Code of Federal Regulation. 28 C.F.R. § 16.22 et. seq., details the procedure to be followed when the testimony of United States Department of Justice employees is sought.

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Defendant's counsel claims in her declaration that "an affidavit has also been attached to this application which details the nature of the questioning and the documents sought as required by and pursuant to 28 C.F.R. § 16.22 et. seq."

The declaration of defendant's counsel does not set forth any details regarding the nature of the questioning.

28 C.F.R. § 16.23 provides in pertinent part . . .

(c) if oral testimony is sought by a demand in a case or matter in which the United States is a party, an affidavit, or, if that is not feasible, a statement by the party seeking the testimony or by the party's attorney setting forth a summary of the testimony sought must be furnished to the Department attorney handling the case.

Counsel's affidavit fails to summarize the testimony sought. The declaration states that the agent will be called "to testify in relation to his conduct and observations on December 19, 2002."

Apparently, counsel for the defendant seeks to generally depose pretrial all the government agents concerning all aspects of the search of the defendant's residence. This is not permissible. A defendant is not entitled to know all the evidence the government intends to produce but only the theory of the government's case. A defendant is not entitled to know the content of the testimony of each of the government witnesses before trial. United States v. Ryland, 806 F.2d 941, 942 (9th Cir. 1986).

The defendant's motion for issuance of subpoenas should be denied.

DATED: September 11, 2003, Honolulu, Hawaii.

EDWARD H. KUBO, JR.
United States Attorney
District of Hawaii

By TMuehle
THOMAS MUEHLECK
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document
was duly served upon the following person(s):

DONNA GRAY
300 Ala Moana Blvd., Room 7-104
Honolulu, HI 96850

Counsel for defendant
John Gilbreath

DATED: September 11, 2003, at Honolulu, Hawaii.

Ramona N. King